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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,879	08/20/2003	Peter Mark Grehlinger	TA-612-US	5213
36183 7590 05/31/2007 PAUL, HASTINGS, JANOFSKY & WALKER LLP P.O. BOX 919092 SAN DIEGO, CA 92191-9092			EXAMINER VU, KIEU D	
			ART UNIT 2173	PAPER NUMBER
			MAIL DATE 05/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,879	<b>Applicant(s)</b> GREHLINGER ET AL.	
	<b>Examiner</b> Kieu D. Vu	<b>Art Unit</b> 2173	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is responsive to the paper filed on 08/20/03.
2. Claims 1-29 are pending.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 23-25 are rejected under 35 U.S.C. 101 because the claims are directed to non-statutory subject matter.

Regarding claim 23, although the preamble of the claim recites "a system", the body of the claim includes only software programs such as "a programming interface", "a script generator", "an output interface". Claim 23 neither includes any computer hardware component(s) nor positively recites that the cited software programs are stored on a computer medium that can be read by a machine. As such, claim 23 is directed to software per se which is non-functional descriptive material and non-statutory.

Similarly, claims 24-25 are directed to software per se which is non-functional descriptive material and non-statutory.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dove et al ("Dove", US 2003/0035004).

Regarding claims 1, 13, 18, 23, 26, 28-29, Dove teaches a method for dynamically controlling operation of a device, comprising: creating a program on a programming interface for executing a test upon a sample in a device by receiving user selections of a plurality of nodes and connections of each node to another node according to directional connection indicators, wherein nodes indicate steps for performing a test upon a sample or configuring a device for performing a test upon a sample [0018]; creating scripts for generating a sequence of instructions to the device, wherein the scripts include instructions for performing steps indicated by each of the selected nodes and in accordance with the directional connection indicators ([0022], [0097]); downloading low-level instructions from the scripts for execution in the device; and instructing systems in the device to perform the downloaded instructions ([0077], [0097]). Dove does not specifically teach that the device is a rheometer but does teach that the device can be used in testing and measuring, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Dove's teaching to a rheometer with the motivation being to enhance the usefulness and application of Dove's invention.

Regarding claim 2, Dove teaches wherein the programming interface is a graphical user interface enabling a user to select pre-existing icons or create icons representative of nodes (0018)).

Regarding claim 3, Dove teaches steps of identifying parameters associated with each selected node and receiving respective parameter values from a user, wherein the scripts are generated in accordance with the selected parameter values [0020], [0097]).

Regarding claim 4, Dove teaches a step of generating forms for prompting a user to enter, confirm, or modify parameter values ([0020]).

Regarding claims 5, 20, Dove teaches wherein scripts are created in accordance with information retrieved from a node class library, which tracks parameters associated with nodes and connections between nodes ([0020], [0097]).

Regarding claim 6, Dove teaches wherein certain nodes are dynamically created, further comprising a step of determining parameters to be identified for each dynamically created node ([0011], [0012], [0020]).

Regarding claims 7, 21, Dove teaches wherein a sequence engine in the rheometer receives the scripts for executing the instructions independently of the programming interface ([0097]).

Regarding claims 8, 22, Dove teaches wherein the scripts are downloaded to the rheometer via a TCP/IP connection for operation without further intervention from the programming interface [0097]).

Regarding claims 9, 16, Dove teaches wherein certain selected nodes are representative of a plurality of other nodes connected by directional connection indicators for grouping instructions associated with a test to be performed in the rheometer ([0012], [0018]).

Regarding claims 10, 17, 19, Dove teaches wherein the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057]).

Regarding claim 11, Dove does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. An Office Notice is taken that a tree view for hierarchical navigation through selected nodes is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

Regarding claim 12, Dove teaches the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057]) but Dove does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. An Office Notice is taken that a tree view for hierarchical navigation through selected nodes is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

Regarding claim 14, Dove teaches wherein scripts are created for generating a sequence of instructions to the rheometer indicated by each of the

selected nodes and in accordance with the directional connection indicators and data flow indicators (0018)).

Regarding claim 15, Dove teaches wherein low-level instructions are downloaded from the scripts for instructing drivers in the rheometer for performing the downloaded instructions ([0022], [0077]).

Regarding claim 24, Dove teaches wherein the output interface additionally downloads instructions to an analysis and presentation tool for creating reports for display to a user ([0073], [0076], [0077]).

Regarding claim 25, Dove teaches wherein the programming interface operates on a graphical user interface for enabling selection of nodes and connections of nodes without requiring a user to enter programming code ([0011]).

Regarding claim 27, Dove teaches comprising the step of encapsulating a sequence of steps for performing a test in a rheometer to be represented as a single icon ([0077]).

7. The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach creating test sequences in a graphical programming environment which relates to the claimed invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

Art Unit: 2173

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached at 571-272-4048.


The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kieu D. Vu

Primary Examiner